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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

Estate of RENE BANAYOT, Deceased.

B211271

(Los Angeles County  
Super. Ct. No. BP100418)

AUTINA GHARIBIAN,

Petitioner and Appellant,

v.

IRENA GAREEB,

Objector and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Reva Goetz, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michael H. Lapidus for Petitioner and Appellant.

Holland & Knight, Bruce S. Ross, Vivian L. Thoreen and Jonathan H. Park for Objector and Respondent.

## I. INTRODUCTION

Petitioner, Autina Gharibian, appeals from an order entered after a court trial. Domicile was the sole question before the probate court. The probate court found the decedent, Rene Banayot, was domiciled in Spain at the time of his death. The probate court denied petitioner's amended petition for probate of a lost will and for letters testamentary without prejudice and placed the matter off-calendar. We conclude petitioner has forfeited her argument; but even if not forfeited, substantial evidence supported the probate court's domicile determination. No other issue having been raised on appeal, we affirm the order under review.

## II. BACKGROUND

Petitioner is Mr. Banayot's step-daughter. Objector, Irena Gareeb, is Mr. Banayot's sister. The evidence at trial was as follows. Mr. Banayot was born in Jordan and retained his Jordanian citizenship. He left Jordan as an adult and moved to Tehran, Iran. He resided in Iran for 27 years. In the early 1970s, Mr. Banayot came to the United States. He became a naturalized citizen of the United States on August 14, 1996. Mr. Banayot made a living buying and selling real property—both residential and commercial. He had at one time or another owned property in Jordan as well as in New York, Arizona, Nevada, and California. Mr. Banayot and his wife, Rose Banayot, also attempted but ultimately failed at several business ventures. In 1975, Ms. Banayot purchased real property on Coldwater Canyon Boulevard in Los Angeles. In 1987, she deeded the property to Mr. Banayot and herself as joint tenants. The property includes multiple rental units as well as a residence in which the Banayots lived for a time. While living in Iran, before she came to the United States, Ms. Banayot had operated two very successful restaurants.

In the 1980s and 1990s, the Banayots traveled back and forth to Spain. The evidence was not entirely clear at what times or for how long either of the Banayots were

in Spain prior to the late 1990s. It was undisputed, however, that in or about 1984, Ms. Banayot purchased raw commercial space near Marbella, Spain. Ms. Banayot left the United States for Spain in 1993. Mr. Banayot followed in 1997. The Banayots owned an apartment in Spain. In 1997 or 1998, the Banayots opened a restaurant in the commercial space Ms. Banayot had earlier purchased. The restaurant was owned 25 percent each by Mr. and Ms. Banayot and her two children. Ms. Banayot's children are petitioner, Ms. Gharibian, and her brother Joseph. Mr. Banayot was involved in the day-to-day operation of the restaurant. Both Ms. Gharibian and her brother Joseph purchased property (or property was purchased for them) in Spain near the Banayots and spent substantial amounts of time there. But the business struggled. It was briefly closed and then reopened three times. The Banayots closed the restaurant for good in 2005, before the end of the summer. The Banayots lived in Marbella, Spain for nine years, from at least January 1997 until Mr. Banayot died, on December 11, 2005. Mr. Banayot died of a heart attack. He was buried in Marbella, Spain.

In the nine years that the Banayots lived in Spain, neither of them returned to California or to the United States. When they traveled outside the country, they returned to Spain. Prior to and at the time of his death, Mr. Banayot was attempting to sell the restaurant. He was also looking for a new car. Although he received unsolicited purchase offers, Mr. Banayot never sold the Coldwater Canyon property. He declined to rent out the residence there. Ms. Gharibian's daughter, Sabrina Haddad, managed the rental properties. The Banayots' antiques, Persian rugs, and other furnishings remained in the Coldwater Canyon residence. Mr. Banayot's Mercedes automobile remained on the Coldwater Canyon property. When Mr. Banayot's niece, Dina R. Gareeb, told him she wanted him to come back to California, he said Spain was a better way of life for him.

An accountant prepared federal and California income tax returns for the Banayots for the years 2004-2007. The accountant never met his clients nor communicated with them directly. Ms. Gharibian's daughter, Mrs. Haddad, supplied the information reflected in the returns to the accountant. The accountant did not know the Banayots

were living in Spain or they had income from a restaurant there. When the joint 2006 and 2007 returns were prepared, the accountant did not know Mr. Banayot had died.

### III. DISCUSSION

Petitioner contends there was no substantial evidence Mr. Banayot intended to abandon his domicile in Los Angeles County and Ms. Gareeb, the objector, failed to meet her burden of proof to the contrary. We review the probate court's domicile finding for substantial evidence. (*DeYoung v. DeYoung* (1946) 27 Cal.2d 521, 523-525; *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 156; *Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1117; *In re Marriage of Leff* (1972) 25 Cal.App.3d 630, 640-641.) The applicable standard of review is as follows: "In resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party (*Leming v. Oilfields Trucking Co.* (1955) 44 Cal.2d 343, 346; *Bancroft-Whitney Co. v. McHugh* (1913) 166 Cal. 140, 142; 6 Witkin, Cal. Procedure (2d ed. 1971) § 245, at p. 4236) and in support of the judgment (*Waller v. Brooks* (1968) 267 Cal.App.2d 389, 394). All issues of credibility are likewise within the province of the trier of fact. (*Estate of Teel* (1944) 25 Cal.2d 520, 526.) 'In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*' (6 Witkin, Cal. Procedure, *supra*, § 249, at p. 4241.) All conflicts, therefore, must be resolved in favor of the respondent. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)" (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926, orig. italics; accord, *Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.)

We agree with Ms. Gareeb that petitioner has forfeited any sufficiency of the evidence contention by failing to fairly state the pertinent facts. As the Supreme Court held in *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881-882: "'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.'" (*Tesseyman v. Fisher* (1952) 113 Cal.App.2d

404, 407; *Pacific Paving Co. v. Mowbray* (1899) 127 Cal. 1, 3; *Green v. Green* (1963) 215 Cal.App.2d 31, 35; *Davis v. Lucas* (1960) 180 Cal.App.2d 407, 409; *Gold v. Maxwell* (1959) 176 Cal.App.2d 213, 217; *Cooper v. Cooper* (1959) 168 Cal.App.2d 326, 331.) [An insufficiency of the evidence contention] ‘requires [the proponent] to demonstrate that there is *no* substantial evidence to support the challenged findings.’ (Italics added.) (*Nichols v. Mitchell* (1948) 32 Cal.2d 598, 600; *Green v. Green, supra*; *Davis v. Lucas, supra*; *Gold v. Maxwell, supra*; *Cooper v. Cooper, supra*.) A recitation of only defendants’ evidence is not the ‘demonstration’ contemplated under the above rule. (*Green v. Green, supra*) Accordingly, if, as defendants here contend, ‘some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.’ (Italics added.) (*Kruckow v. Lesser* (1952) 111 Cal.App.2d 198, 200 and cases there collected; *Sutro Heights Land Co. v. Merced Irr. Dist.* (1931) 211 Cal. 670, 688-689; *Kanner v. Globe Bottling Co.* (1969) 273 Cal.App.2d 559, 564; *Haynes v. Gwynn* (1967) 248 Cal.App.2d 149, 151; *Green v. Green, supra*; *Davis v. Lucas, supra*; *Gold v. Maxwell, supra*; *Cooper v. Cooper, supra*.)” (Accord, *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 484-486; *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951.) Here, petitioner sets forth the evidence most favorable to her position and disregards facts that might undermine it. She has not provided a fair summary of the evidence, favorable and unfavorable, relevant to the challenged finding. She has not shown that the evidence most favorable to the finding is insufficient to support it. Under these circumstances, she has forfeited her sufficiency of the evidence claim.

Even if the argument were not forfeited, we would conclude substantial evidence supported the probate court’s domicile determination. Pursuant to Probate Code section 7051, “If the decedent was domiciled in this state at the time of death, the proper county for proceedings concerning administration of the decedent’s estate is the county in which the decedent was domiciled, regardless of where the decedent died.” The Court of

Appeal has held: “The concept of domicile involves the concurrence of physical presence in a particular place with the intention to make that place one’s home. ‘The acquisition of a new domicile is generally understood to require an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time without any fixed or certain purpose to return to the former place of abode.’ (DeYoung v. DeYoung, [supra,] 27 Cal.2d 521, 524.) The judicial concept of domicile is essentially equivalent to the lay idea of home. (Restatement, Conflict of Laws, § 12; 61 Harv.L.Rev., 1234.) It embodies a disposition towards permanence, an attitude of attachment. (See *Texas v. Florida* [(1939)] 306 U.S. 398, 425-426; *District of Columbia v. Murphy* [(1941)] 314 U.S. 441, 455.) Also, domicile has a continuing quality because a person always has a domicile and does not lose one until another is acquired. (Restatement, Conflict of Laws, § 23; Gov. Code, § 244(c).)” (*Estate of Glassford* (1952) 114 Cal.App.2d 181, 186.) As our Supreme Court explained in *Smith v. Smith* (1955) 45 Cal.2d 235, 239: “[D]omicile’ is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively; whereas ‘residence’ connotes any factual place of abode of some permanency, more than a mere temporary sojourn. ‘Domicile’ normally is the more comprehensive term, in that it includes both the act of residence and an intention to remain; a person may have only one domicile at a given time, but he may have more than one physical residence separate from his domicile, and at the same time. [Citations.]” (Accord, *In re Marriage of Amezquita & Archuleta* (2002) 101 Cal.App.4th 1415, 1419; *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268.)

Mr. Banayot lived in Marbella, Spain with his wife for nine years. Together, they owned a home and a business there. Mr. Banayot was involved in the day to day operation of their restaurant. He returned to Spain each time he traveled outside the country. During those nine years, Mr. Banayot did not come to California or even to the United States. He told his niece the life in Spain was better for him than in California.

There was no evidence Mr. Banayot intended to leave Spain. On the contrary, at the time of his death, he was looking for a new car. This was substantial evidence Mr. Banayot was domiciled in Spain; that he intended to remain there for an indefinite time without any certain purpose to return to California.

#### IV. DISPOSITION

The order denying without prejudice the petition to probate a lost will is affirmed. Objector, Irena Gareeb, is to recover her costs on appeal from petitioner, Autina Gharibian.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.